

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

CALVIN CHASE,

CV. 09-858-SU

Petitioner,

FINDINGS AND RECOMMENDATION

v.

RICK COURSEY,

Respondent.

SULLIVAN, Magistrate Judge.

On July 24, 2009, petitioner filed this 28 U.S.C. § 2254 habeas corpus action. On September 9, 2009, the court issued a briefing schedule calling for a response brief from respondent, as well as a supporting memorandum from petitioner.

On June 7, 2010, respondent timely filed a responsive memorandum in which he provided various reasons as to why relief on the Petition should be denied. Petitioner's supporting memorandum was due on August 9, 2010, and when he failed to file that

document, the court ordered him to show cause why his Petition should not be dismissed.

On October 7, 2010, petitioner filed a Motion for Extension of Time which the court granted, leaving petitioner's response due on December 6, 2010. Petitioner has not, however, communicated with the court in any way since October 7, 2010. Despite ample opportunity to do so, petitioner has continually failed to file his supporting memorandum in this case and has also failed to respond to the court's Order to Show Cause. Accordingly, the Petition for Writ of Habeas Corpus should be dismissed.

RECOMMENDATION

Based on the foregoing, the court should enter a judgment DISMISSING this case with prejudice. The court should also decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

SCHEDULING ORDER

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to

timely file objections to any factual determination(s) of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue(s), and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

IT IS SO ORDERED.

DATED this 2nd day of March, 2011.

/s/ Patricia Sullivan

Patricia Sullivan

United States Magistrate Judge